REMARKS

The Office Action mailed February 28, 2003 (hereinafter "the Office Action") rejected all of the original claims 1-29 under 35 U.S.C. 103(a) as being unpatentable over Kemp et al. in view of Perl, although the references were not specifically applied to any one of the 29 claims. For the reasons set forth below, applicant and counsel for applicant respectfully disagree with the assertion in the Office Action that the combination of those two references meets each of the limitations contained in all 29 original claims or even that it is appropriate to modify Kemp et al. in view of Perl.

First, with respect to the combination of Kemp et al. in view of Perl, applicant agrees that both references are directed to a self-cleaning kitchen oven but only Kemp et al. includes a broiler element in the ceiling of the oven that is comprised of a radiant or infrared gas broiler having a venturi tube assembly for inducing the mixture of gas and air. Perl has a burner tube [22] supplied with only gas and two air tubes [25] that have holes for supplying pressurized air directly to the gas combustion area below the burner tube [22]. This difference in the top burners of Kemp et al. and Perl is significant with respect to applicant's original and revised claims, as well as the grounds for rejection in the Office Action, for several reasons.

Kemp et al. "teaches a way" from the combination asserted in the Office Action whereby the modification thereof in view of Perl proposed by the Office Action is not obvious or appropriate. Kemp et al. specifically discloses that the oven burners [68] and [80] are supplied with air solely by convection and inspiration effect, which Kemp et al.

repeatedly asserts is important to his invention and disclosure as a supply of air that is separate from the positive flow of air by fans [100] to cool the shell of the oven. Specifically, such disclosure in Kemp et al. is set forth in various locations, with underlining for emphasis, as follows:

1. ". . . means for supplying combustion air by normal inspiration to the oven burners independently of the flow of cooling air" (Abstract)

2. "It will be apparent that air which enters duct [64] through the central opening [66] will flow to the burners [80] and [68] by convection and by the inspiration effect provided by the burners. However, in accordance with this invention, cooling air is forcefully moved over the heated oven body entirely separate from the flow of combustion air." (Column 4, lines 30-36)

3. "However, in either case, the forcibly moved cooling air is always independent of the flow of combustion air to the burners" (Column 5, lines 63-66)

4. ". . . a plurality of blowers mounted on side walls of said air cavity for drawing in cooling air . . . said cooling air being substantially isolated from said primary and secondary air" (claim 1, column 6, lines 41-46, the primary and secondary air being the air supplied to the burners by convection)

Thus, Kemp et al. specifically teaches that both burners of the oven are to be supplied with combustion air by convection and the inspiration effect of the venturi tube. To establish a *prima facie* case of obviousness, three basic criteria must be met (1) there must be some suggestion or motivation to modify or combine the references, (2) there must be

reasonable expectation of success, and (3) the references must teach or suggest all the limitations, MPEP 706.02(j) and 2143. Here there is no such suggestion to combine or modify the references but rather the principal reference (Kemp et al.) specifically teaches not to provide a positive airflow to the burners. As stated in MPEP 2143.01, page 2100-125:

> "If the proposed modification or combination of the prior art would change the principal of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In Re Ratti, 270 F.2d 810 (CCPA 1959)

There is no teaching in either Kemp et al. or Perl that a venturi-type (Kemp et al.) burner air supply may be changed from normal aspiration to a positive airflow created by a blower and there is no reason to modify Kemp et al. to add a positive airflow since Kemp et al. prefers normal convection flow to the burners. In Re Laskowski, 871 F.2d 115 (Fed. cert. 1989). It is respectfully submitted that the modification of Kemp et al. by Perl in the Office Action is by inappropriate "hindsight." As stated in W.L. Gore & Associates, Inc. the Garlock, Inc. 712 F.2d 1540, 220 U.S.P.Q. at 303 (Fed. cert. 1983);

> ". . . to imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious

effect of a hindsight syndrome wherein that which only the inventor taught is used its teacher."

Further, Kemp et al. discloses a venturi tube assembly as the upper burner, which conventionally doesn't use or require a positive air flow supply, and one skilled in the art wouldn't make such a modification. Applicant claims an arrangement that contradicts the conventional wisdom by adding pressurized air to the venturi tube.

Referring to the Office Action characterizations of the references, it is noted that there are a couple of errors in interpreting structures and operation of those references. The Office Action asserts that Kemp et al. discloses ". . . a second duct [64] in communication with the first duct [50]" whereas in fact the first and second ducts [50] and [64] are completely separate with first duct [50] being a cooling chamber around the oven that is supplied with air by the fans [100] and second duct [64] providing air to the burners by convection. The Office Action asserts Perl "includes a fan [68] in communication with a duct [63]" whereas fan [68] actually supplies air to duct [62], although that error is understandable in that the lead lines from numerals [62] and [63] in Fig. 1 do not extend to the correct ducts as described in the specification.

Moreover, it is respectfully submitted that the now-pending claims clearly distinguish over the Kemp et al. and Perl references regardless of the manner in which those references may be characterized or combined.

Claim 2 has been rewritten to include all of the limitations, verbatim, of original claim 1 and requires ". . . said ducting includes an opening adjacent the Venturi tube opening for

the discharge of excess air of said supply of positive airflow" which is not disclosed by either of the references. Perl discloses positive airflow to the burners through ducting that does not have an opening or any other means for permitting the discharge of excess air that may be supplied by the fan.

Claim 3 depends from Claim 2 and adds the limitation that "said opening allows the intake of ambient air" when the positive airflow is inadequate, which also is not shown by Perl. Further, there is no "opening" adjacent the venturi tube in Kemp et al. that would allow both the intake of ambient air or the discharge of excess air.

Claim 5 has been rewritten to include all of the limitations, verbatim, of original claim 1 and requires "an inlet to said ducting is located adjacent the top exterior of the oven for drawing air across the top of the oven" which provides cooling of the top surface of the oven. Neither of the references discloses such an "inlet" adjacent the top surface of the oven.

Claim 6 has been rewritten to include all of the limitations, verbatim, of original claim 1 and requires that the ducting include a downwardly extending duct on the back wall and a "laterally extending transfer duct" communicating that downwardly extending duct and the venturi tube open, which is not shown by either of the references. This combination duct arrangement is clearly shown, for example, in Figs. 6 and 8 of applicant's drawings.

Claims 7-12 depend directly or indirectly from Claim 6 and are believed allowable for the same reasons Claim 6 is allowable, as well as by reason of the specific structural limitations that each of those claims add.

Independent Claim 14 has been rewritten to include, verbatim, the limitations of claim 13 and is similar to Claim 2 in including the opening adjacent the venturi tube, although directed specifically to the arrangement of the first and second ducts while including the other elements of the oven in the preamble. Similarly, Claim 15 is the same as Claim 3 but depends from Claim 14. Claims 17, 18 and 19 add further structural limitations to the first and second ducts, which structures are not shown in references.

Claim 20 defines the invention as comprising the entire oven, but includes the limitations, for example, of Claims 2, 3,14 and 15 in somewhat different terminology. Specifically, Claim 20 requires ducting on the oven back wall extending over the venturi tube opening and a free flow opening adjacent the venturi tube opening for allowing the free flow of ambient air into the venturi tube when the positive airflow supply is inadequate and allowing the discharge of excess air when the positive airflow supply is excessive, which is not shown by Kemp et al. or Perl. Claims 23, 24 and 25 add further limitations to the structure of the ducting which are shown by the references.

In summary, it is respectfully submitted that the Office Action's combination of Kemp et al. as modified in view of Perl is impermissible as (1) contrary to the teachings of Kemp et al. that avoids positive airflow to the burners, (2) contradicting conventional practice of not providing a positive air flow to venturi tube type burners, and (3) failing to provide any incentive or suggestion in either reference to make the asserted combination or modification. Further, each of the claims now clearly distinguish structurally over Kemp et al. and Perl, regardless of the propriety of the combination or modification thereof, by

structural limitations that are not disclosed in either of those references. Reconsideration and a favorable action on the merits of the revised claims is respectfully requested.

Respectfully submitted,

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Dated: 8/19/03

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